Supreme Court, U.S.
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NO. 95-459

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1994

WILLIAM H. REPLOGLE,
Petitioner,

v.

PENNSYLVANIA CIVIL SERVICE COMMISSION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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STATEMENT OF THE CASE

1. Petitioner, Dennis Replogle, an employee of the Pennsylvania Department of Transportation, asks the Court to review a decision of the Pennsylvania Commonwealth Court which upheld the State Civil Service Commission's decision that he be subject to a thirty-day suspension from work for violation of the Pennsylvania Civil Service Act's prohibitions against political activity by covered state employees. Pa. Stat. Ann. tit. 71, §905b. Petitioner, permitted by an exception in the act to be a candidate in an election for school board, violated other provisions of the act in the course of running for that office. Although the act does provide that "no [member of the classified service] shall be deemed ineligible for the office of school director solely [on that basis]" Pa. Stat. Ann. tit. 71, §741.905b(d), it also prohibits employees covered by its provisions from inter alia, "soliciting votes in support of or in opposition to a candidate for public office in a partisan election or a candidate for political party office" Id., §741.905b(b)(7) and from "endorsing or opposing a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, a broadcast, campaign, literature, or similar material." Id., §741.905b(b)(10).[1]

2. Following a hearing, the Civil Service Commission found that Petitioner had violated these provisions by endorsing other candidates for school board at

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[1]The act does permit covered employees to belong to political parties, attend political gatherings, express opinions "as an individual privately and publicly on political subjects and candidates," and "Otherwise participate fully in public affairs, except as provided by law, in a manner which does not materially compromise efficiency or integrity as an employee or the neutrality, efficiency or integrity of a Commonwealth Agency." Id., §741.905b(c).

public forums and by distributing cards listing their names at the polling place. The Commission concluded that Petitioner should be subject to a thirty-day suspension, the minimum penalty under the act.

The Commonwealth Court affirmed the Commission's order, concluding that the act's proscriptions on political activity were clear, and that the record evidenced Petitioner's violations. Of the issue presented in this petition, the court said only that the First Amendment arguments were "not viable" and that it perceived "'no constitutional infirmity' in upholding the Act's restrictions on the activities of civil service employees, as reflective of the public policy against undue influence." Petition, pp. 22-33, citation omitted. The Pennsylvania Supreme Court denied a petition for allowance of appeal, and petition now asks the Court to accept review of the matter by writ of certiorari.

REASON FOR DENYING THE WRIT

A. The Lower Court Correctly Decided the Issue by Application of Well Settled Principles.

Petitioner has pointed to no conflict among the lower courts as to the question presented, nor has he presented a novel or important issue such as would justify review by the Court. In affirming the decision of the Civil Service Commission, the Commonwealth Court did no more than to reaffirm, without significant discussion, the general authority of the state to limit the political activities of its employees. This holding is not controversial, and is consonant with the Court's decisions on the subject. In *United States Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548 (1973), the Court, reaffirming the constitutionality of the Hatch Act, the Court discussed its view of the permissible scope of such an act

> We unhesitatingly reaffirm the Mitchell holding that Congress had, and has, the power to prevent Mr. Poole and others like him from holding a party office, working at the polls, and acting as party paymaster for other party workers. An Act of Congress going no farther would in our view unquestionably be valid. So would it be if, in plain and understandable language, the statute forbade activities such as . . . actively participating in fund-raising activities for a partisan candidate or political party . . . becoming a partisan candidate for, or campaigning for, an elective public office;

> actively managing the campaign of a partisan candidate for public office; initiating or circulating a partisan nominating petition or soliciting votes for a partisan candidate for public office; or serving as a delegate, alternate or proxy to a political party convention. Our judgment is that neither the First Amendment nor any other provision of the Constitution invalidates a law barring this kind of partisan political conduct by federal employees.

Id. at 556 (emphases in original). See also, *Broadrick v. Oklahoma*, 413 U.S. 601 (1973) (upholding state version of the Hatch Act). Neither is the Commonwealth Court's decision at odds with *Rutan v. Republican Party of Illinois*, 497 U.S. 62 reh. denied 497 U.S 1050 (1990) cited by petitioner. That case holds only that promotions, transfers and recalls by low level government employees may not be based on political affiliation or support.

The Court has consistently upheld the Hatch Act and its state counterparts. The state laws are of course not uniform, and it would serve no purpose to review the decision of a state intermediate appellate court which, interpreting the provisions of one of them, does no more than echo the general principles advanced by this Court.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

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